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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,060	09/29/2003	Stephen Fitzgerald	CE-COMP-04.US	4727
55678	7590	10/04/2005	EXAMINER	
MILTON, GELLER, LLP 700 - 225 METCALFE STREET OTTAWA, ON K2P-1PG CANADA			GRAHAM, MARK S	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

T. W. L. K.

Office Action Summary	Application No. 10/672,060	Applicant(s) FITZGERALD ET AL.	
	Examiner Mark S. Graham	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-45 is/are pending in the application.
- 4a) Of the above claim(s) 21-30, 31/21, 32/21, 33/21, 36/21, 41 42/41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 14-20, 31/14-20, 32/14-20, 33/14-20, 36/14-20, 37-40, 42/37-40, 43, 44, and 45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 14-45 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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Applicant's election with traverse of the Fig. 6 embodiment in the reply filed on 8/31/05 is acknowledged. The traversal is on the ground(s) that the different embodiments represent a single invention. This is not found persuasive because the applicants have not admitted for the record that the various embodiments are obvious variants of one another.

The requirement is still deemed proper and is therefore made FINAL.

Claims 21-30, 31/21, 32/21, 33/21, 36/21, 41, and 42/41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 8/31/05. Applicant's comments regarding claims 21, 41, 42/41 have been noted. However, no support is found for the 5% limitation with regard to the Fig. 6 embodiment.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 14, 15, 16, 19, 20, 31/(14,15, 19, 20) 32/(14,15, 19, 20), 33/(14,15, 19, 20), 40, and 42/40 are rejected under 35 U.S.C. 102(b) as being anticipated by Fritzke

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et al. '022 (Fritzke). Note Fritzke's insert as shown in Figs. 14 and 15 which may be bonded to the inside of the barrel.

Concerning claim 31, because Fritzke anticipates the claimed structure the properties of the bat would also be anticipated.

Claim 36/(14, 15, 19, 20) is rejected under 35 U.S.C. 102(e) as being clearly anticipated by Vacek.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17, 18, 31/(17, 18) 32/(17, 18), 33/(17, 18), 34, 35, 37-39, 42/(37, 38, 39), and 43-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fritzke.

Concerning claims 17, 32/17, 33/17, and 37 note paragraph 75 of Fritzke. Fritzke discloses the use of different fiber orientations. Fiber angles at a higher average angle to the longitudinal axis provide more radial stiffness than fiber angles at a lesser angle. It would have been obvious to one of ordinary skill in the art to have used such angles at the center of Fritzke's insert if it was desired to provide greater radial stiffness in that area.

Regarding claim 18, 32/18, 33/18, 38, and 39 the examiner takes official notice that different fibers comprise different stiffnesses. As Fritzke is interested in tailoring stiffness in the barrel as desired, it would have been obvious to one of ordinary skill in

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the art to have used fibers of different stiffnesses to obtain such different stiffnesses in the bat barrel.

Concerning claim 31, because Fritzke obviates the claimed structure the properties of the bat would also be obviated.

With regard to claims 34, 35, and 43-45, absent a showing of unexpected results the exact length of the mid-section would obviously have been up to the ordinarily skilled artisan depending on the particular bat characteristics desired by the batter in the bat.

Claim 36/(16, 17, 18) is rejected under 35 U.S.C. 103(a) as being unpatentable over Vacek in view of Fritzke. Vacek discloses the claimed device with the exception of the means by which the insert stiffens the center of the barrel. However, as disclosed by Fritzke in paragraph 75 various means may be used to stiffen the center portion of the barrel. As noted above varying the angle of fibers to be greater with regard to the longitudinal axis inherently provides greater radial stiffness and using a stiffer fiber type accomplishes the same result. It would have been obvious to one of ordinary skill in the art to have used either of these known means to provide the extra stiffness in the insert portion of Vacek's bat.

Applicant's arguments with respect to claims 14-20 and 31-45 have been considered but are moot in view of the new ground(s) of rejection and the reasons expressed above. The priority date of Vacek dates at least to 5/14/03 (a divisional application adds no new subject matter to the parent application) and therefore is available as prior art against the instant application.

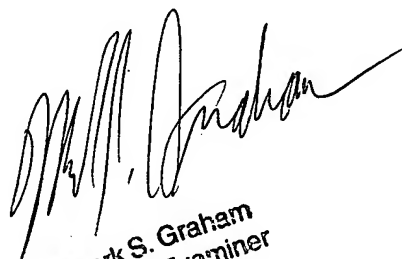
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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to Mark S. Graham at telephone number 571-272-4410.

MSG
9/29/05



Mark S. Graham
Primary Examiner